

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of)	
)	
800 Data Base Access Tariffs and the)	CC Docket No. 93-129
)	
800 Service Management System Tariff)	
)	
and)	
)	
Provision of 800 Services)	CC Docket No. 86-10
_____)	

**PACIFIC BELL'S REPLY TO COMMENTS ON ITS
SCHEDULE OF PROPOSED REFUNDS**

I. **INTRODUCTION**

Pacific Bell ("Pacific") hereby replies to the comments filed by AT&T Corp. ("AT&T")¹ and MCI Telecommunications Corporation ("MCI")² concerning Pacific's schedule of proposed refunds filed in compliance with the Commission's April 14, 1997 order addressing refunds associated with disallowed 800 data base exogenous costs.³ There is no merit to the various faults that AT&T and MCI claim to find with Pacific's as-filed refund schedule.

¹ AT&T Comments, dated June 3, 1997.

² MCI Comments, dated June 3, 1997.

³ *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, CC Docket No. 93-129, and *Provision of 800 Services*, CC Docket No. 86-10, FCC 97-135, *Order on Reconsideration* (rel. April 14, 1997) ("Order on Reconsideration").

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II. THE COMMISSION SHOULD REJECT AT&T'S AND MCI'S SUGGESTIONS THAT AN EXOGENOUS ADJUSTMENT BE USED TO IMPLEMENT 800 DATA BASE REFUNDS

AT&T and MCI appear to suggest that the Commission should require that Pacific and other local exchange carriers implement an exogenous cost decrease as the vehicle to return overcharges to 800 data base customers.⁴ AT&T's and MCI's suggestion is inappropriate and should be rejected. The Commission's *Order on Reconsideration* did not require that refund plans use an exogenous adjustment to LEC price cap indices. In fact the FCC instructed LECs to file a schedule of proposed refunds "accompanied by a detailed description of how the proposed refunds were calculated, and a description of the carrier's plan to implement the refund."⁵ Pacific and other LECs have successfully employed bill credits as a refund mechanism in the past and there is no reason Pacific and other LECs cannot do so here.

The Commission, in any event, should not require LECs to use an exogenous adjustment for refunds in this proceeding because it will improperly distribute the refunds to customers that should not receive a refund. Under the Commission's price cap rules, any exogenous cost adjustment in this instance would be applied to the Traffic Sensitive basket's Price Cap Index -- the basket that includes 800 Data Base services. The exogenous cost adjustment in concert with the price cap rules would decrease the upper limits not only of the 800 Data Base service category's Service Band Index ("SBI") but also of the Local Switching and

⁴ See AT&T Comments at 3, MCI Comments at 2. AT&T and MCI do not, however, take issue with Pacific's refund mechanism -- which proposes bill credits as the mechanism to distribute refunds to customers.

⁵ *Order on Reconsideration* at para. 21.

Information service categories in the Traffic Sensitive basket.⁶ This would be contrary to the intent of the *Order on Reconsideration* and the authority the Commission delegated to the Common Carrier Bureau to determine that “the necessary refunds are paid to the proper parties.”⁷

An exogenous cost adjustment has the additional disadvantage of increasing rate churn for customers. The 800 data base refund -- if implemented via an exogenous cost adjustment -- would be reflected through a temporary exogenous decrease in the Traffic Sensitive basket’s PCI. This temporary adjustment would end after the 800 data base refund liability was eliminated. Thus, customers would enjoy decreased rates during the refund period only to be confronted with increased rates following the refund. This is likely to result in confusion for customers and inquiries directed to Pacific’s service representatives as rates increase following the refund period.

Moreover, use of an exogenous cost adjustment is likely to require additional review by the Commission. Pacific expects that such an adjustment would require another comment cycle that would follow a Commission order reducing the PCIs as part of the refund. This further comment cycle would be necessary because the order reducing the PCIs would require tariff changes along with accompanying cost support in the form of a tariff review plan. Interested parties are likely to be allowed yet another comment round on these tariffs. All of this additional work and inevitable delay can be eliminated by adopting Pacific’s plan, which would apply customer bill credits in proportion to the customer’s purchase of 800 service for the entire refund period.

⁶ See 47 C.F.R. Part 61.47(e), which requires that the percent change in PCI be applied to the upper limits of all SBIs in the basket.

⁷ *Order on Reconsideration* at para. 21.

III. AT&T AND MCI ARGUMENTS AGAINST SHARING OFFSETS ARE IN ERROR

AT&T claims that LECs should not be allowed to offset the 800 data base refunds by any previous sharing obligations because sharing does not mean that a LEC “has made a refund to the customers for its overstated PCI”⁸ and that LECs are unable to “demonstrate that any sharing obligation resulted from their 800 data base rates.”⁹ MCI argues that since sharing can occur regardless of any overcharges, and since there is no direct link between “inflated traffic sensitive PCIs” and sharing obligations, sharing offsets should not be allowed.¹⁰ AT&T’s and MCI’s arguments against sharing offsets defy the basic logic of the sharing calculation.

The source of a LEC’s sharing obligation, under the Commission’s rules, is revenue a LEC collects beyond a certain benchmark amount. If a portion of the revenue a LEC collected (and on which it incurred a sharing obligation) is later found to be subject to refund -- thereby decreasing the amount of revenue that should have been collected during the sharing measurement period -- then clearly the LEC’s sharing obligation would have been lower. Thus in a situation, as here, where it is later determined that refunds must be made, the prior sharing effectively becomes a premature refund of previously over-collected revenue. Without a sharing offset, Pacific will be burdened twice for earnings above the sharing benchmark -- once as part of sharing and again as part of the 800 data base refund. Such a “double hit” clearly would violate

⁸ AT&T Comments at 6.

⁹ Id. at 7.

¹⁰ MCI Comments at 5.

the Commission's sharing rules that prescribe a 50% sharing amount when a LEC earns between 12.25% and 16.25%.¹¹

AT&T further alleges that Pacific miscalculated its sharing offset. AT&T claims that Pacific assumed "incorrectly that its disallowed exogenous costs were reflected in its sharing obligations beginning with the first year (1993) of the disallowed costs."¹²

AT&T confuses the relevant time period for calculating the sharing obligation with the tariff period during which any sharing obligation is returned to ratepayers. The disallowed exogenous costs for a given year are properly included in the rate of return and sharing obligation calculations for that year. For example, Pacific's final sharing obligation for 1993 was \$7.9 million.¹³ The disallowed exogenous cost for 1993 was \$4.1 million.¹⁴ Since the sharing obligation exceeded 50% of the disallowed exogenous cost, and if the disallowed exogenous changes had never gone into effect, Pacific's sharing obligation would have been reduced by 50% of \$4.1 million, or \$2.0 million. In short, there is no miscalculation of the sharing offset.

IV. PACIFIC'S INTEREST CALCULATION IS PROPER

AT&T claims that Pacific's interest calculation is in error, in that it begins the calculation of interest on January 1, 1994 -- the beginning of the year following the May 1, 1993 800 data base tariff effective date.¹⁵ AT&T argues that since the refunds relate to specific rates,

¹¹ *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786 (1990); 47 C.F.R. 61.45(d)(2). Subsequently, different sharing productivity options were prescribed. *LEC Price Cap Performance Review*, 10 FCC Rcd 8961 (1995).

¹² AT&T Comments at 9.

¹³ Pacific Bell Transmittal No. 1864, Workpaper IIC-12 (April 2, 1996).

¹⁴ Pacific Bell's Schedule of Proposed Refunds, Workpaper II (May 14, 1997).

¹⁵ AT&T Comments at 9.

the interest calculation should have begun as of the effective date of the 800 data base tariff.

AT&T arguments again are incorrect.

The Commission's *Order on Reconsideration* does not involve a refund related to specific rates -- *i.e.*, the Commission did not prescribe specific rates or find any rates unreasonable -- and hence there is no requirement that the interest calculation begin as of the tariff effective date. Instead, the Commission ordered "refunds consistent with the Commission's price cap rules and policies".¹⁶ In this situation -- and similar to refunds that occur under price cap sharing¹⁷ -- interest is properly calculated as of the beginning of the year following the tariff effective date. Pacific's interest calculation is appropriate and should be approved.¹⁸

¹⁶ *Order on Reconsideration* at para. 21.

¹⁷ See *id.* at para. 22, n.53 (citing *In re Section 208 Complaints Alleging Violations of the Commission's Rate of Return Prescription for the 1987-1988 Monitoring Period*, 8 FCC Rcd 5485 (1993) (*Section 208 Order*). Interest accrual related to the 1987-1988 overearnings refunds addressed in the *Section 208 Order* began on the first day of the year following the period for which the refund applied (see *Section 208 Order* at ordering para. 47).


¹⁸ AT&T claims that several LECs improperly "calculated interest on the PCI adjustment only up until the time they filed the adjustment, instead of calculating interest until the time the refund is actually paid" (AT&T Comments at 7). Pacific's previously-filed interest calculation end date of June 30, 1997 was chosen for illustrative purposes. Pacific will calculate interest through the refund date as determined by the Commission.

V. CONCLUSION

Pacific respectfully renews its request that the Commission accept its proposed refund schedule.

Respectfully submitted,

PACIFIC BELL

A handwritten signature in cursive script, reading "Randall E. Cape", is written over a horizontal line.

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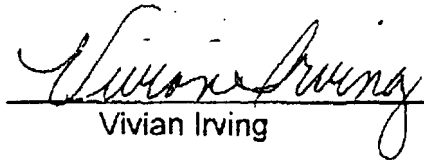
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Date: June 13, 1997

CERTIFICATE OF SERVICE

I, Vivian Irving, do hereby certify that on this 13th day of June, 1997, a copy of the foregoing "Pacific Bell's Reply To Comments On Its Schedule of Proposed Refunds," was mailed by U.S. first-class mail, postage prepaid to the parties listed below.


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